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EXAMINER
GISHNOCK, NIKOLAI A

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3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/809,443	MARTIN, ROLF JOHN
	Examiner	Art Unit	
	Nikolai A. Gishnock	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _04 August 2006_.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _117-136_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _117-136_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _04 August 2006_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

In response to Applicant's amendments, dated 8/4/2006, claims 1-116 are cancelled. Claims

117-136 are pending.

Drawings

1.   The drawings were received on 8/4/2006. These drawings are acceptable.

Priority

2.   Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or

under 35 U.S.C. 120, 121, or 365(c) is acknowledged. However, Applicant has not complied

with one or more conditions for receiving the benefit of an earlier filing date under 35

U.S.C. §119(e) and §120 as follows: The later-filed application must be an application for a

patent for an invention which is also disclosed in the prior application (the parent or original

nonprovisional application or provisional application). The disclosure of the invention in the

parent application and in the later-filed application must be sufficient to comply with the

requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v.*

Performance Contracting, Inc., 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). The disclosure

of the prior-filed applications, Application No. 09/861,768 and 60/206,072, fail to provide

adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112

for one or more claims of this application. A person skilled in the art would not recognize in the

disclosure of 09/861,768 and 60/206,072 a description of the invention defined by claims 118-

136 of the instant application. A written description in full, clear, concise, and exact terms could

not be found in the disclosure for all of the claimed method steps is found in the documents to

which priority is claimed, among others, "wherein instruction is provided prior to a response series", displaying a computer generated instruction to increase a response speed of said examinee when said number of errors is less than a minimum number of errors within said response series", "wherein said response series comprises from about 20 to about 40 responses", "wherein said minimum number of errors is an integer selected from the group consisting of 1-5", wherein said number of errors is from about 10% to about 20% of said responses", "displaying a warning message....wherein said warning instructs the examinee to proceed more rapidly", "correlating said score with said at least one health related word", "ranking said word by a magnitude of change of said performance score after input of said word", "determining at least one time period after input of said word", "correlating said word and performance in said at least one time period", "displaying for each said word a correlation between said word and a change of said performance score for each examinee", "wherein a correlation comprises a function including a time differential between an input of a word and a performance score", "providing said examinee with a list of words related by their correlation with positive changes in performance", "providing said examinee an explanation that words given highest rating are most likely to represent beneficial foods and other heath related items", "providing said examinee with means to obtain a health rating for any word entered in health factor and health description entry areas at the time of measurement", "providing first and second health ratings for each said word", "providing said examinee with means to search for said entered words with the highest and lowest health ratings", "providing said examinee with means to obtain a health rating for any word combination by concatenating words within the combination", "providing a user with means to obtain a ranking of at least one previously input word", "ranking said at least one word by a health or performance change subsequent to said input", "wherein at least one word is selected from the group consisting of words describing

health factors, performance factors, and cognitive factors", and "providing user with means to select a time period covered by the analysis".

Specification

3.   The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Antecedent basis in the specification for the limitation of claim 117, "providing a computer-generated instruction that said examinee respond rapidly to a test stimulus so that at least a minimum number of errors is made" is not apparent. No new matter should be entered.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5.   Claims 118-136 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A clear written description appears to be lacking for all of the claimed method steps is found in the specification for the limitations as stated above under the heading, "Priority". The specific elements of the claims are alleged to find support in the computer code on Floppy Disk appendix. However, one skilled in the programming art could not have reasonably recognized the claim limitations presented in the instant application as implied by

over 6,000 lines of HTML and JAVASCRIPT code included. The names of function calls, for example, are not necessarily descriptive of the claims and are merely placeholders for code. Also, the presence of a default value of a global variable that could be changed by a programmer does not imply embodiments of the invention in which these values have been changed to "appropriate" values. Further, establishment of the order in which programming instructions are executed is not apparent merely from the order in which those instructions appear in the code, as functions are frequently called repetitively and out of order. There are also no remarks or user comments in the code which would assist in the understanding of the code functions. The claim limitations have not been presented in plain English and in wording that makes known in the specification the Applicant's possession of the invention at the time of filing. Therefore, for at least these reasons, the claims fail to meet the written description requirement.

6.   Claims 124-136 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear where in the specification support is found for the limitations, "correlating said score with at least one health-related word" in claim 124, "ranking said words by a magnitude of change of said performance score after input of said word", as in claim 125, displaying a list of words input by said examinee; and displaying for each said word correlation between said word and a change of said performance score for each said examinee" as in claim 127, "providing said examinee with a list of words rated by their correlation with positive changes in performance" as in claim 129, "providing said examinees with means to obtain a health rating for any word

entered in health factor and health description entry areas at the time of measurement" as in claim 130, providing first and second health ratings for each word" as in claim 131, "providing said examinee with means to search for said entered words with the highest and lowest health ratings" as in claim 132, "providing said examinee with means to obtain a health rating for any word combination by concatenating words within the combination" as in claim 133, providing a user with means to obtain a ranking of at least one previously input word; and ranking said at least one word by a health or performance change subsequent to said input" as in claim 134, "wherein said at least one word is selected from the group consisting of words describing health factors, performance factors, and cognitive factors" as in claim 135. While the Examiner recognizes that the specification teaches the storage of information such as performance, measurement accuracy, health, and health-related activities and events, including foods, beverages, and medications consumed, exercise, sleep, social events, and activities or events that affect health and performance, it is unclear where support for correlating and displaying health-related words in general is found, and specifically for searching for and ranking words. Because claims 126, 128, & 136 depend from rejected claims 124 & 134, they too fail to meet the enablement requirement.

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8.   Claims 117-136 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claims 117-123, it is unclear whether the errors disclosed in the claims refer to computer measurement errors or input errors made by an examinee during the course of the test. With regard to claims 124-136, it is unclear whether the words input by the

examinee refer to challenge signals input by the examinee during the test, or to linked storage

of information about performance, computer measurement accuracy, health, and health-related

activities and events. Further in claim 124, it is unclear where there is antecedent basis for the

term, "said at least one health-related word" in the claims. In claim 132, it is unclear where there

is antecedent basis for the term, "the highest and lowest health ratings" in the claims.

Double Patenting

9.   The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent
possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting
rejection is appropriate where the conflicting claims are not identical, but at least one examined
application claim is not patentably distinct from the reference claim(s) because the examined
application claim is either anticipated by, or would have been obvious over, the reference
claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re
Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re
Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be
used to overcome an actual or provisional rejection based on a nonstatutory double patenting
ground provided the conflicting application or patent either is shown to be commonly owned with
this application, or claims an invention made as a result of activities undertaken within the scope
of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10.   Claim 117 is rejected on the ground of nonstatutory obviousness-type double patenting

as being unpatentable over claims 6 & 15 of U.S. Patent No. 6,712,615, in view of Darby et al.

(US 2002/0192624). Patent 6,712,615 teaches a computer-based method for testing the

cognitive performance of at least one examinee comprising: providing to at least one examinee

at least one measurement session comprising a plurality of response series comprising a

plurality of responses (in claim 6); and wherein an examinee is asked to respond rapidly to a

test stimulus so that at least a minimum number of errors is made (in claim 15). What Patent

6,712,615 fails to explicitly teach is wherein the question asked is a computer-generated

instruction. However, Darby et al. (US 2002/0192624) teaches providing computer-generated

instructions to an examinee in a cognitive test (Para. 0075). Therefore, it would have been

obvious to one of ordinary skill in the art, at the time the invention was made, to have used to

the computer, as taught in US Patent 6,712,615, to generate the instruction asking the user to

respond rapidly, as taught in US Patent 6,712,615, in the manner taught in Darby et al. (US

2002/0192624), for the purpose of presenting the test in a manner that conforms in accordance

with predetermined test protocols [Claim 117].

Claim Rejections - 35 USC § 102

11.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public
> use or on sale in this country, more than one year prior to the date of application for patent in the United
> States.

12.   Claims 117-132 are rejected under 35 U.S.C. 102(b) as being anticipated by Darby et al.

(US 2002/0192624), hereinafter known as Darby. Darby discloses a computer based method for

testing the cognitive performance (Para. 0056) of at least one examinee (test subject, Para.

0075), comprising: providing to at least one examinee at least one measurement session,

comprising a plurality of responses (test to evaluate a subject's response, Para. 0076), and

providing a computer generated instruction (a prompting or an indication of proper responses to

test trials, Para. 0096-0097) to respond rapidly to a test stimulus so that at least a minimum

number of errors is made (a determination that the test subject has input a sufficient number of

incorrect responses may be interpreted as an indication that additional instruction is required,

Para. 0104) [Claim 117], wherein the instructions are provided prior to the responses (control of testing sequences my pass to testing module upon completion of appropriate instruction procedures, Para. 0068-0069) [Claim 118], determining a number of errors made (a test may monitor the number of correct {and incorrect} responses, Para. 0097), and displaying instructions to increase response speed when the number of errors is less that a minimum (a threshold number of incorrect responses may be a function of testing protocols which may be interpreted as an indication that additional instruction is required, Para 0104) [Claim 119]. Darby discloses reading at least one word input by an examinee (previously recorded response data, Para. 0014-0015; comprising factors such as age, gender, education, documented head injuries, drug use, personality traits, and the like, Para. 0125); determining a performance score by said examinee (response data, {test} results, and associated information is recorded, Para. 0124; also Figure 8, Item 821); and correlating the score with at least one health-related word (reference data obtained through a test sequence may be compared with normalized or characteristic data, Para. 0124) [Claim 124], and ranking words by a magnitude of change of a performance score after word input (comparison of reference data for a test subject and normalized or characteristic data sets representing the average, expected, normal, or mean testing results for diagnostics and general evaluation, Para. 0124-0125) [Claim 125], and determining at least one time period after a word input (an appropriate interval {i.e., period of 6-18 months} may elapse between administration of test sequences; wait period may be customized and may be a function of factors such a s current state of cognitive functionality and family medical history, all of Para. 0130); and correlating the word and the performance in at least one time period (tests may be administered monthly, weekly, or daily depending on foregoing factors, Para 0130; information from the current test sequence may be compared with reference data recorded at an earlier time or date, Para 0127) [Claim 126], and displaying a list

of words input by an examinee (transmitting completed test results by email for analysis, Para

0176, also, Figure 10, Item 1014); and displaying a correlation between each word and a

change of performance score for the examinee (as in Para. 0124-0125) [Claim 127], where the

correlation comprises a function including a time differential between an input of a word and a

performance score (as in Para. 0130) [Claim 128], and providing an examinee with a list of

words related by correlation with performance (each user or test subject may be provided with

one or more data records related to personal or characteristic profile information; which may

affect the testing methods, the analysis of test data and results; information including gender,·

handedness, education level, all in Para. 0177); and providing an explanation of ratings

(diagnostic procedures and data manipulation are conducted, and resulting data and

comparison information related to the diagnosis may also be transmitted, Para 0128) [Claim

129], and providing means to obtain a health rating for any word entered in health factor and

health description entry areas at the time of measurement (as in Para. 0124-0125) [Claim 130],

and providing first and second health ratings for each word; and providing means to obtain first

and second health ratings (reference data set to be used in subsequent comparisons may be

updated with response data and results obtained during the most recent test sequence, Para

0127, and obtained as in Para. 0128) [Claim 131].

13.   Claims 134-136 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et

al. (US 6,435,878 B1), hereinafter known as Reynolds. Reynolds discloses a computer-based

method for word analysis, comprising: providing a user with means to obtain a ranking of at

least one previously input word (system compiles a historical comparison and analysis of test

scores presents written comments, and provides a performance rating system all graphically

displayed, 4:36-39); and ranking at least one word by a health or performance change

subsequent to input (the program provides comments after the entire test battery is completed

yielding test interpretations, as well as insights into, and appropriate suggestions, 8:37-39)

[Claim 134], where the word is selected from the group consisting of words describing health,

performance, and cognitive factors (subjects registers comments, including unusual conditions

such as drugs, emotions, drinks, foods, vitamins, sleep, exercise, programs, etc., 8:25-29)

[Claim 135], and providing the user with means to select a time period covered by the analysis

(The program plots performance scores over daily, weekly, and quarterly periods, 8:24-25)

[Claim 136].

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

15.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

    1.   Determining the scope and contents of the prior art.
    2.   Ascertaining the differences between the prior art and the claims at issue.
    3.   Resolving the level of ordinary skill in the pertinent art.
    4.   Considering objective evidence present in the application indicating obviousness
          or nonobviousness.

16.   Claims 120-122, 132, & 133 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Darby. Darby teaches all the features as demonstrated above in the rejections of claims

117 & 124. Darby also teaches completion of a response series may require a predetermined

number of test trials (Para. 0105). What Darby fails to teach is wherein the response series

comprises from about 20 to about 40 responses [Claim 120]. However, Applicant has not

disclosed that having about 20 to about 40 responses solves any stated problem or is for any

particular purpose. Moreover, it appears that the predetermined number of responses in a

series of Darby's or the Applicant's instant invention would perform equally well for testing the

cognitive performance of an examinee, because additional normalized data would only increase

the accuracy of the test response analysis. Accordingly, it would have been obvious to one of

ordinary skill in the art, at the time the invention was made, to have modified the number of

responses in a response series to about 20 to about 40, because such a modification would

have been considered a mere design consideration, which fails to patentably distinguish over

the cognitive test of Darby [Claim 120]. Darby also teaches a threshold number of correct and

incorrect responses for a response series (Para. 0096-0097 & 0104-0105). What Darby also

fails to teach is where the minimum number of errors is an integer selected from the group

consisting of 1, 2, 3, 4, and 5 [Claim 121], or from about 10% to about 20% of responses [Claim

122]. However, Applicant has not disclosed that having a specific integer number, or a

percentage of errors out of a total number of responses solves any stated problem or is for any

particular purpose. Moreover, it appears that the threshold of errors of Darby or the Applicant's

instant invention would perform equally well for testing and evaluating cognitive function,

because additional data on a test subject's correct and incorrect responses would serve to

increase the accuracy of the data analysis. Accordingly, it would have been obvious to one of

ordinary skill in the art, at the time the invention was made, to have modified the threshold of

errors required in the response series of Darby, such that integer numbers 1-5, or percentages

from about 10% to about 20% were used to define a test series, because such a modification

would have been considered a mere design consideration, which fails to patentably distinguish

over Darby [Claims 121 & 122]. Darby teaches normalized health-related normalized and characteristic data in a database, and comparing the data with the reference data for a particular test (Para. 0124-0125). What Darby also fails to teach is providing an examinee with means to search for said entered words with the highest and lowest health ratings [Claim 132]. However, the Examiner takes OFFICIAL NOTICE that it is old and well-known in the art that databases with characteristic data having health ratings as indices can be searched and ordered by those indices. A process ranking the most common and likely causes of an effect matching the symptoms of a disease is essentially how a medical diagnosis is made. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have made the database of characteristic and normalized data of a test subject, compared with the subject's reference data, as taught by Darby, to be searchable by highest and lowest health ratings, for the purpose of quickly and correctly organizing data [Claim 132]. Darby also teaches using computer program instructions to perform cognitive testing (Para. 0048), and to provide health ratings (analyzing the efficacy of treatments of cognitive deficiencies, Para. 0056). What Darby fails to teach is providing an examinee with means to obtain a health rating for any word combination by concatenating words within the combination [Claim 133]. However, the Examiner also takes OFFICIAL NOTICE that it is old and well-known in the art of programming that search engines are able to concatenate strings of words in data structures. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have provided an examinee a health rating, as taught by Darby, based on the concatenation of words, in order to thoroughly evaluate all possible combinations of words more quickly than a human evaluator [Claim 133].

Response to Arguments

17.   The rejections based on 35 USC §112, ¶2 of claims 117-136, made in the Office Action

of 4/4/2006, see pages 5-7, were not addressed in the Applicant's Remarks, filed 8/4/2006.

18.   Applicant's arguments filed 8/4/2006, see pages 8-35, have been fully considered but

they are not persuasive. The Applicant argues that the claims as enabled in the JAVASCRIPT

code appendix, but makes no showing of how the claims meet the written description

requirement of 35 USC §112 ¶1. The test for written description is whether a person skilled in

the art would recognize in the Applicant's disclosure a description of the invention defined by the

claims. Further, the Applicant's argument for support of enablement for claims 124-136, see

pages 14-35, is based on an arbitrary, lingual interpretation of the meaning of computer code.

However, computer instructions are known to have a precise, literal meaning as executed by the

computer, and cannot be construed to have ambiguous meanings as applied by the Applicant.

Otherwise, the computer would be unable to execute them. The test for enablement requires a

determination of whether that disclosure, when filed, contained sufficient information regarding

the subject matter of the claims as to enable one skilled in the pertinent art to make and use the

claimed invention. In this instance, the arguments also fail to show support for claims 124-136

because the Applicant has not clearly shown how to make and use the invention in the

specification other than a statement on the preparation of the files, images, and sound data.

19.   Applicant's arguments filed 8/4/2006, see pages 36-37, have been fully considered but

they are not persuasive. The Applicant argues that neither Darby nor Jenkins discloses the

limitation of a computer generated instruction to the examinee. However, Darby does teach

providing computer generated test instructions to a test subject, as demonstrated above. The

intended use recited in the claim does not impart sufficient structural details with which to

identify a distinguishing feature of the invention, and thus cannot be given patentable weight.

Further, the Applicant argues that neither Darby nor Jenkins disclose this method of word

analysis of health and performance factors. However, the argument is moot, as the Examiner

has relied on the Reynolds disclosure to more clearly show anticipation of the claims.

Conclusion

20.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure. Stewart et al (US 6,053,739) discloses a computer based cognitive test for response

speed that minimizes latency errors, and allows user input of a variety of health related words to

create a profile. Boyd et al. (US 2004/0229198 A1) employs DirectX to minimize latency errors

in a computer based cognitive test using the computer's native keyboard to measure response

speed.

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Nikolai A. Gishnock whose telephone number is 571-272-1420. The

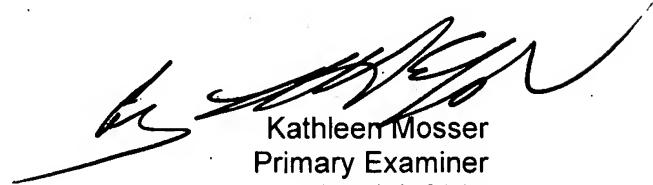examiner can normally be reached on M-F 8:30a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

would like assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NAG

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5/7/2007

Kathleen Mosser
Primary Examiner
Art Unit 3714